



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1368 OF 2022
WITH
CIVIL APPLICATION NO.2631 OF 2017
IN
WRIT PETITION NO.1368 OF 2022

MR. SUBASH THAWANI

)...PETITIONER

V/s.

THE ADDITIONAL COMMISSIONER, PUNE
DIVISION, PUNE AND OTHERS

)
)...RESPONDENTS

Mr.Amey Deshpande a/w. Mr.Ganesh Misal and Mr.Vishal Kale,
Advocate for the Petitioner.

Mr.C.D.Mali, AGP for the Respondents No.1 and 2.

Ms.Vinodini Srinivas a/w. Mr.Dharmesh Jain i/by Mr.Anil Agrawal,
Advocate for the Respondent No.3.

CORAM : ABHAY AHUJA, J.

DATE : 8th AUGUST 2023

PC. :

1. By this Writ Petition filed under Article 227 of the Constitution of India, the Petitioner is aggrieved by the order dated 26th August 2016 passed by the Divisional Commissioner, Pune, in Revision Application No.171 of 2015 dismissing the said Application and confirming the

order dated 21st September 2015 of the Competent Authority, Pune, evicting the Petitioner directing vacation of the property within thirty days and directing damages to be paid by the tenant at double the rate of license fees from 1st March 2009 till the date of actual handing over of the vacant and peaceful possession, i.e. at the rate of Rs.36,000/- per month.

2. It is not in dispute that the landlord, who is the Respondent herein, had entered into a leave and license agreement dated 7th December 2006 for a period of twenty four months commencing from 7th December 2006 to 6th December 2008 on a monthly license fees of Rs.18,000/- per month. On expiry of the license period on 6th December 2008, the Petitioner did not vacate the suit premises and continued to stay, after which the Respondent no.3 wrote a mail to the Petitioner on 11th January 2009 offering to execute a new leave and license agreement with Rs.25,000/- per month as license fees. In a further communication on 10th February 2009, the Respondent no.3 informed the Petitioner about the expiry of the leave and license agreement and asked him to move out of the suit premises immediately. It is also not in dispute that during this period, the Respondent no.3 permitted Petitioner to remain in possession of the

suit premises till the end of February 2008. On 5th April 2009, the 3rd Respondent's Advocate sent an email to the Petitioner putting forward the option of either renewing the leave and license agreement for a period of one year or vacating the suit premises. Then again on 13th July 2009, the Respondent no.3 sent a legal notice to the Petitioner for recovery of possession on the ground of irregularity in payment of license fees and gave notice for vacating the suit premises by 30th September 2009.

3. It is the case of the Respondent no.3 that the Secretary of the Sacred Heart Co-operative Housing Society had sent a letter dated 28th November 2009 requesting them not to extend the leave and license agreement with the Petitioner, as his presence as a licensee was not desirable by the society under the By-laws and that the society had sought expulsion of the Petitioner on the ground of non-payment of maintenance fees of another flat.

4. Respondent no.3, thereafter, filed an application under Section 24 of the Maharashtra Rent Control Act, 1999 on 19th December 2009, for eviction of the Petitioner due to expiry of licensed period and also in default of payment of license fees. Leave to defend was granted by the

Competent Authority to the Petitioner on 16th February 2010 and written statement was also filed by the Petitioner. After hearing the parties and considering the evidence, the Competent Authority held that the Petitioner was a licensee under the leave and license agreement dated 7th December 2006 in respect of the suit premises which had expired on 6th December 2008 and no agreement of contract had been entered into or formulated to extend the same and that the Respondent no.3 bonafide needed his property back for his own use, allowed the application, passing the following order on 21st September 2015 :

“ **ORDER**

1. *The application of the Applicants at Exh.1 is allowed.*
2. *The prayer of eviction of the Opponent from the suit property is allowed. The Opponent is directed to vacate the suit property in a period of Thirty (30) days from the date of this order and hand over vacant and peaceful possession of the suit premises to the Applicants.*
3. *The prayer for damages and arrears of license fees is allowed. The Opponent is directed to pay damages at double the rate of license fees from 01/03/2009 till the date of actual handing over of the vacant and peaceful possession, i.e. at the rate of Rs.36000/- (Rs.Thirty Six Thousand) per month. The Opponent shall deposit this amount of damages in ninety (90) days time, in this Court.*
4. *No order as to costs. Both the litigants will bear their own costs.”*

5. Aggrieved by the same, the Petitioner filed a Revision Application

which was rejected on 26th August 2016 and the order dated 21st September 2015 of the Competent Authority was confirmed.

6. Mr.Amey Deshpande, learned Counsel for the Petitioner, would submit that the Petitioner has already handed over possession of the suit premises on 26th September 2016 as evidenced by surrender Purshis (on page 88 of the Petition), and therefore, the total amount of monthly compensation as directed by the order of the Competent Authority be reduced.

7. On the other hand, Ms.Srinivas, learned Counsel for the Respondent no.3, would submit that, admittedly, the Petitioner was allowed to stay for another period of three months after the expiry of the leave and license agreement on 6th December 2008 for which license fees was also paid by the Petitioner, which ended in April 2009. She would submit that despite the same, the possession was handed over only on 26th September 2016 and no payment has been forthcoming for this period by the Petitioner, and therefore, no indulgence can be shown. Learned Counsel draws the attention of this Court to Section 24 of the Maharashtra Rent Control Act and submits that sub-section (2) clearly provides that a licensee who does not

deliver possession of premises to the landlord on the expiry of the period of license and continues to be in possession of the licensed premises till he is dispossessed by the Competent Authority shall be liable to pay damages at double the rate of the license fee and submits that the Competent Authority and the Revisional Authority have rightly directed the Petitioner to pay the license fees from 1st March 2009 till the handing over of the possession at the rate of Rs.36,000/- per month and the said orders cannot be faulted with.

8. I have heard Mr.Amey Deshpande, learned Counsel for the Petitioner, Mr.C.D.Mali, Assistant Government Pleader for the Respondents No.1 and 2 and Ms.Vinodini Srinivas, learned Counsel for the Respondent No.3.

9. Facts are not in dispute. The leave and license agreement dated 7th December 2006 was for a period of two years and the Petitioner was to vacate the suit premises after the expiry of the said license agreement on 6th December 2008. The Petitioner was in permissive possession till the end of February 2008. Notices were issued but without any compliance, and thereafter, pursuant to an application under Section 24 of the Maharashtra Rent Control Act, the Competent

Authority passed the order directing vacation of the said property and payment of damages at double the rate of the license fees from 1st March 2009 till the date of actual handing over of the vacant and peaceful possession at Rs.36,000/- per month. Section 24 of the Maharashtra Rent Control Act, 1999, is usefully quoted as under :

“S. 24. Landlord entitled to recover possession of premises given on license on expiry :

(1) Notwithstanding anything contained in this Act, a licensee in possession or occupation of premises given to him on license for residence shall deliver possession of such premises to the landlord on expiry of the period of license; and on the failure of the licensee to so deliver the possession of the licensed premises, a landlord shall be entitled to recover possession of such premises from a licensee, on the expiry of the period of license, by making an application to the Competent Authority, and, the Competent Authority, on being satisfied that the period of license has expired, shall pass an order for eviction of a licensee.

(2) Any licensee who does not deliver possession of the premises to the landlord on the expiry of the period of license and continues to be in possession of the licensed premises till he is dispossessed by the Competent Authority shall be liable to pay damages at double the rate of the license fee or charge of the premises fixed under the agreement of license.

(3) The Competent Authority shall not entertain any claim of whatever nature from any other person who is not a licensee according to the agreement of license.

Explanation : For the purposes of this Section , -

(a) the expression “landlord” includes a successor-in-interest who becomes the landlord of the premises as a result of death of such landlord; but does not include a tenant or a sub-tenant who has given premises on license;

(b) an agreement of license in writing shall be conclusive evidence of the fact stated therein.

10. It is clear from sub-section 2 of Section 24 that if a licensee does not deliver possession of the premises to the landlord on the expiry of the period of the license and continues to be in possession of the licensed premises till he is dispossessed by the Competent Authority, the licensee shall be liable to pay damages at double the rate of the license fee or charge of the premises fixed under the agreement of license. It is not in dispute that the leave and license agreement dated 7th December 2006 expired on 6th December 2008 and the Petitioner was in permissive possession till February 2009. The Competent Authority directed that in addition to vacating the said property, the payment of damages at double the rate of the license fees be paid from 1st March 2009 till the date of actual handing over of the vacant and peaceful possession. Admittedly, the possession has been handed over on 26th September 2016. Therefore, in accordance with the provisions of Section 24(2) the Petitioner is liable to pay damages with effect from 1st March 2009 till 26th September 2016.

11. The sub-section (2) to Section 24 of the Maharashtra Rent Control Act is clearly mandatory. No fault can therefore be found with

the order of the Competent Authority or with the order of the Revisional Authority. There is neither any illegality nor any error or perversity in the orders of the Competent Authority or Revisional Authority. No case for interference in the said orders is made out.

12. The Petition is, therefore, dismissed. Parties to bear their own costs.

13. Pending Civil Application also to accordingly stand disposed.

(ABHAY AHUJA, J.)